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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/519,248	03/06/2000	Lee S. Weinblatt	990456/TL	8252

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767 Third Avenue  
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New York, NY 10017

EXAMINER

VUONG, QUOCHIE B

ART UNIT	PAPER NUMBER
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2685

DATE MAILED: 02/12/2004

*2*

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/519,248

Applicant(s)

WEINBLATT ET AL.

Examiner

Quochien B Vuong

Art Unit

2685

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE \_\_\_\_ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 March 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 13 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 13 recites the limitation "**the** surveying code" in line 3; and "**said** third detecting means" in lines 3-4. There is insufficient antecedent basis for this limitation in the claim.

It is suggested that claim 13 should depend on claim 2.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 12, 14, 15, 20, 31, and 33-35 are rejected under 35 U.S.C. 102(b) as being anticipated by Kiewit (US 4,930,011).

Regarding claim 1, Kiewit (figure 1) discloses an apparatus (10) for identifying members of an audience tuned to a program broadcast by a programming signal source, comprising; stationary means (14-26) including transmitter means (14) for

periodically emitting a query signal (polling signal) and positioned at a reception location with reproduction equipment (28) to perform the program (column 3, lines 37-40); a plurality of portable means (12) carried by members of the audience, including first detecting means to detect said query signal and, responsive thereto, emit respective audience-member identification signals (column 2, lines 15-34; column 3, lines 27-33, 37-40); and said stationary means including second detecting means (14) to detect said identification signals (column 3, lines 48-50).

Regarding claim 15, Kiewit (figure 1) discloses a method for identifying members of an audience tuned to a program broadcast by a programming signal source, comprising: storing personal identification data in a plurality of portable devices (12) to be carried by members of the audience (column 2, lines 15-34; column 3, lines 27-33); periodically emitting a trigger signal at a reception location (column 3, lines 37-40); transmitting said identification data from the portable devices of audience members in attendance at the reception location in response to said trigger signal (column 3, lines 37-40); and detecting said transmitted identification data (column 3, lines 48-50).

Regarding claim 20, Kiewit (figure 1) discloses an apparatus (10) for identifying members of an audience tuned to a program broadcast by a programming signal source, comprising; a plurality of portable means (12) carried by members of the audience, including means to periodically emit respective audience-member identification signals (column 2, lines 15-34; column 3, lines 27-33, 37-40); and stationary means (14-26) positioned at a reception location with reproduction equipment

to perform the program (28), said stationary means including means (14) to detect said identification signals (column 3, lines 48-50).

Regarding claim 34, Kiewit (figure 1) discloses a method for identifying members of an audience tuned to a program broadcast by a programming signal source, comprising: storing personal identification signals in a plurality of portable devices (12) to be carried by members of the audience (column 2, lines 15-34; column 3, lines 27-33); periodically transmitting said identification signals from the portable devices (column 3, lines 37-40); and detecting the identification signals from those of said portable devices that are carried by audience members in attendance at a reception location (column 3, lines 48-50).

Regarding claims 12, 31, and 35, Kiewit discloses the stationary means includes means to store the identification signals (column 3, line 54 – column 4, line 8).

Regarding claims 14 and 33, Kiewit discloses the stationary means further comprises download means for transferring the detected identification signals to a remote processing station (column 4, lines 3-8).

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 2-11, 13, 16-19, 21-30, 32, and 36-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kiewit in view of Thomas (US 5,768,680).

Regarding claims 2, 16, 21, and 36, Kiewit does not disclose the broadcast program is transmitted by the programming signal source in combination with a surveying code, and the stationary means further comprises third detecting means for detecting said surveying code and associating said surveying code with said identification signals. However, in the same field of endeavor, Thomas (figures 1-2) discloses a programming signal source in combination with a surveying code, and a stationary means comprises detecting means for detecting said surveying code and associating said surveying code with said identification signals (column 3, lines 33-56; column 4, line 55 – column 5, line 34. In this case the “program identification signal” is read on the claimed “survey signal”). Therefore, it would have been obvious for one having ordinary skill in the art at the time the invention was made to adapt the teaching of Thomas to Kiewit to monitor what program the audience is watching or listening to.

Regarding claims 3, 17, 22, and 37, Thomas discloses the third detecting means associates the surveying code which is detected at a given time with the identification signals detected at said given time (column 3, lines 33-37).

Regarding claims 4 and 23, Thomas discloses the stationary means includes means to store said surveying codes (column 4, line 61 – column 5, line 11).

Regarding claims 5 and 24, Kiewit disclose the stationary means includes means to store said identification signals (column 3, line 54 – column 4, line 8).

Regarding claims 6, 25, and 32, Thomas disclose the reproduction equipment includes fourth detecting means to detect and retransmit the surveying code (column 4, lines 61-66; column 5, lines 12-26), and Kiewit discloses the third detecting means is adapted to receive such retransmitted surveying code (column 3, lines 37-54).

Regarding claims 7 and 26, Kiewit discloses each of said portable means emits a unique identification signal (column 3, lines 27-30).

Regarding claims 8 and 27, Kiewit discloses the portable means include means to prevent the identification signals detected by the second detecting means from interfering with each other in being detected by said stationary means (column 4, lines 41-46).

Regarding claims 9, 18, 28, and 38, Thomas discloses means for setting a time interval during which the surveying codes detected by the third detecting means are associated with the identification signals detected by the second detecting means (column 3, lines 32-37).

Regarding claims 10, 19, 29, and 39, Thomas discloses a first memory means to store the detected surveying codes with the associated identification signals during said time interval and a second memory for storing data retrieved from the first memory upon termination of the time interval (column 4, line 66 –column 5, line 11). And Kiewit discloses a first memory means to store the detected surveying codes with the associated identification signals during said time interval and a second memory for storing data retrieved from the first memory upon termination of the time interval (column 3, line 54 – column 4, line 8).

Regarding claims 11 and 30, Kiewit discloses download means responsive to an actuation signal for transferring data stored in said second memory to a remote processing station (column 4, lines 3-8).

Regarding claim 13, Thomas disclose the reproduction equipment includes fourth detecting means to detect and retransmit the surveying code (column 4, lines 61-66; column 5, lines 12-26), and Kiewit discloses the third detecting means is adapted to receive such retransmitted surveying code (column 3, lines 37-54).

8. Claims 2, 16, 21, and 36 are rejected under 35 U.S.C. 103(a) as being obvious over Kiewit in view of Weinblatt (US 5,457,807).

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in



Art Unit: 2685

the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). For applications filed on or after November 29, 1999, this rejection might also be overcome by showing that the subject matter of the reference and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person. See MPEP § 706.02(I)(1) and § 706.02(I)(2).

Regarding claims 2, 16, 21, and 36, Kiewit does not disclose the broadcast program is transmitted by the programming signal source in combination with a surveying code, and the stationary means further comprises third detecting means for detecting said surveying code and associating said surveying code with said identification signals. However, in the same field of endeavor, Weinblatt (figure 1) discloses a programming signal source (3) in combination with a surveying code (5), and a stationary means comprises detecting means for detecting said surveying code and associating said surveying code with said identification signals (column 5, line 58 – column 7, line 55). Therefore, it would have been obvious for one having ordinary skill in

the art at the time the invention was made to adapt the teaching of Weinblatt to Kiewit to monitor what program the audience is watching or listening to.

### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Weinblatt (US 4,718,106) discloses a survey of radio audience.

Baehr et al. (US 5,839,050) disclose a system for determining radio listenership.

Welsh et al. (US 4,955,070) disclose an apparatus and method for automatically monitoring broadcast band listening habits.

Worthy et al. (US 5,819,155) disclose active system and method for remotely identifying RF broadcast stations.

Itoh et al. (US 5,896,554) disclose status monitoring apparatus for car radio.

10. Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington, D.C. 20231

**or faxed to:**

(703) 872-9314

Hand-delivered responses should be brought to Crystal Park II, 2021

Crystal Drive, Arlington, VA 22202, Sixth Floor (Receptionist).

Any inquiry concerning this communication from the examiner should be directed to Quochien B. Vuong whose telephone number is (703) 306-4530. The examiner can normally be reached on Monday through Friday from 9:30 a.m. to 6:00 p.m. EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Urban, can be reached on (703) 305-4385.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Customer Service whose telephone number is (703) 306-0377.



**QUOCHIE B. VUONG**  
**PRIMARY EXAMINER**

Quochien B. Vuong  
Feb. 05, 2004.